

person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such producer;

(2) Received by a handler described in § 1007.9(c); or

(3) Diverted from a pool plant in accordance with § 1007.13.

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant pursuant to § 1007.13;

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order plant designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); or

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

#### **§ 1007.13 Producer milk.**

*Producer milk* means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1007.9(c);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) In any month of December through June, not less than four days' production of the producer whose milk

is diverted is physically received at a pool plant during the month;

(2) In any month of July through November, not less than ten days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(d)) during the month;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that will not be producer milk pursuant to paragraphs (d)(3) and (4) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk;

(6) To the extent that it would result in nonpool status for the plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(7) The cooperative association shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (d)(6) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk;

(8) Diverted milk shall be priced at the location of the plant to which diverted; and

(9) The market administrator may increase or decrease the applicable percentages in paragraphs (d) (3) and (4) of this section by up to 10 percentage points, and may increase or decrease the 10-day and 4-day delivery requirements in paragraphs (d) (1) and (2) of this section by 50 percent if, following a written request for such a revision, the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision by conducting an investigation and conferring with the Director of the Dairy Division. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing seven days before the effective date.

**§ 1007.14 Other source milk.**

*Other source milk* means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b)(1) from any source other than producers, a handler described in § 1007.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1007.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1007.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

**§ 1007.16 Fluid cream product.**

*Fluid cream product* means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1007.17 Filled milk.**

*Filled milk* means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).